

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 UNITED STATES OF AMERICA,

No. CR 10-469 CW

5 Plaintiff,

ORDER DENYING  
REQUEST FOR  
EXTENSION OF TIME

6 v.

7 ANTOINE NICHOLAS MOORE,

8 Defendants.

9 \_\_\_\_\_ /  
10  
11 On September 7, 2011, Defendant Antoine Moore plead guilty  
12 to one count of being a felon in possession of a firearm and  
13 ammunition in violation of 18 U.S.C. § 922(g)(1). Judgment was  
14 entered against Mr. Moore on March 30, 2012. Mr. Moore has filed  
15 a request for an extension of time to file a § 2255 habeas corpus  
16 petition.

17 However, because Mr. Moore has not yet filed his habeas  
18 petition, there is no case or controversy over which this court  
19 may exercise jurisdiction. Accordingly, the Court may not grant  
20 Mr. Moore's request, which "in essence asks the Court to determine  
21 in advance whether his petition for writ of habeas corpus will be  
22 time-barred if it is filed at some unspecified date in the future  
23 and is subjected to a motion to dismiss under the limitations  
24 period." Bjorn v. Warden, 2009 U.S. Dist. LEXIS 56211 (N.D. Cal.)  
25 Courts routinely deny requests for extensions of time to file a  
26 habeas corpus petition. See, e.g., United States v. Leon, 203  
27 F.3d 162, 164 (2d Cir. 2000) (holding that a federal court lacks  
28 jurisdiction to consider the timeliness of a § 2255 petition until

1 a petition is actually filed); Brown v. Hedgpeth, 2012 U.S. Dist.  
2 LEXIS 190020 (C.D. Cal.) (dismissing without prejudice an action  
3 opened when a state prisoner filed a motion for extension of time  
4 to file a § 2254 habeas petition); Bjorn v. Warden, 2009 U.S.  
5 Dist. LEXIS 56211 (same); Chairez v. Adams, 2007 U.S. Dist. LEXIS  
6 45206 (N.D. Cal.) (same).

7 If and when Mr. Moore files his habeas petition, he may make  
8 a tolling argument as to why the time should be extended if his  
9 petition is not timely filed and respondent moves to dismiss on  
10 that ground. See United States v. Battles, 362 F.3d 1195, 1197  
11 (9th Cir. 2004) (holding that equitable tolling applies to § 2255  
12 petitions).

13  
14 IT IS SO ORDERED.

15  
16 Dated: 3/21/2013

  
17 CLAUDIA WILKEN  
18 United States District Judge